

BID ADDENDUM

FAILURE TO RETURN THIS BID ADDENDUM IN ACCORDANCE WITH INSTRUCTIONS MAY SUBJECT YOUR BID TO REJECTION ON THE AFFECTED ITEM(S)/SERVICES.

Bid Number: ITS-002724

Bid Opening Date/Time Remains November 4, 2005 @ 2:00 PM

Description: Voting Machines

Addendum Number: 2 Addendum Date: October 25, 2005

INSTRUCTIONS:

1. Return one properly executed copy of this addendum with bid response or **prior** to the Bid Opening Date/Time listed above.

2. Changes to Bid:

Section IV: Mandatory Technical Requirements/Specifications, Requirement # 3,

2) The proposed equipment must be certified by EAC/NASED to the 2002 Voting System Standards at the time of the RFP bid opening on November 4, 2005.

Is DELETED in its entirety and CHANGED to:

2) The proposed equipment must be certified by EAC/NASED to the 2002 Voting System Standards no later than December 22, 2005.

3) Proof of testing and verification must be provided with the RFP response.

Is DELETED in its entirety and CHANGED to:

3) Proof of testing and verification or proof of submission to an ITA must be provided in the RFP response.

Addendum #1

Vendors' proposals shall include a copy of a written request/authorization to the Independent Testing Authority (ITA) for a release of full copies of the ITA software, hardware, and firmware test results for the proposed configuration to the North Carolina State Board of Elections and authorization to the relevant ITA to discuss their procedures and findings from their tests on the vendor's software, hardware, and firmware with representatives and authorized agents from the State of North Carolina. The request shall direct the ITA to send the reports for delivery to the State Board of Elections office not later than Thursday, November 10, 2005. All ITA reports must be addressed and shipped to:

Mr. Bob Rauf State Board of Elections 506 Harrington Street Raleigh, NC 27603

Vendor proposals shall state clearly any restrictions they will place on such a data and information that the ITA provides. (NOTE: Failure to provide all reasonable access to the ITA test documentation and results may result in a disqualification from further consideration.)

Is DELETED in its entirety and CHANGED to:

Vendors' proposals shall include a copy of a written request/authorization to the Independent Testing Authority (ITA) for a release of full copies of the ITA software, hardware, and firmware test results for the proposed configuration to the North Carolina State Board of Elections and authorization to the relevant ITA to discuss their procedures and findings from their tests on the vendor's software, hardware, and firmware with representatives and authorized agents from the State of North Carolina. The request shall direct the ITA to send the reports for delivery to the State Board of Elections office not later than Tuesday, November 15, 2005 for vendors certified by EAC/NASED to the 2002 Voting System Standards at the time of the RFP bid opening on November 4, 2005. Vendors under examination by ITA at the time of the RFP bid opening shall direct the ITA to send the reports for delivery to the State Board of Elections office not later than Friday, December 9, 2005. All ITA reports must be addressed and shipped to:

Mr. Bob Rauf State Board of Elections 506 Harrington Street Raleigh, NC 27603

Vendor proposals shall state clearly any restrictions they will place on such a data and information that the ITA provides. (NOTE: Failure to provide all reasonable access to the ITA test documentation and results may result in a disqualification from further consideration.)

Requirement #13 DRE Specifications 1) The proposed DRE voting system and/or vendor:

e) Shall operate under a procedure that does NOT normally require an election worker to activate DRE voting units except where the voter requests and is entitled to voting assistance under the provisions of the law. The vendor's proposed system shall operate under a procedure by which the voter activates or initiates the voting session at all DRE voting units. Vendors' proposals shall contain a narrative description of the means by which the voter receives and uses a physical, electronic, biometric, or other "device" through which to initiate the voting session on the vendor's proposed DRE voting system. This narrative shall contain descriptions of the procedures by which: (1) an authorized election official creates or activates the device; (2) the voter uses the device to activate the DRE voting unit and initiate the voting session; and (3) election officials retrieve, if at all, the device once it has been used in a voting session. There also shall be a full disclosure by the vendor of how the DRE system shall operate so as to comply with the curbside voting requirements of GS 163-166.9. The curbside requirements may be meet either by the DRE itself or a procedure associated with the use of the DRE.

Is DELETED in its entirety and CHANGED to:

e) Vendors' proposals shall contain a narrative description of the means by which the voting session is initiated using a physical, electronic, biometric, or other "device" on the vendor's proposed DRE voting system. This narrative shall contain descriptions of the applicable procedures by which: (1) an authorized election official creates or activates the device; (2) the voter or pollworker uses the device to activate the DRE voting unit and initiate the voting session; and (3) election officials retrieve, if at all, the device once it has been used in a voting session. There also shall be a full disclosure by the vendor of how the DRE system shall operate so as to comply with the curbside voting requirements of GS 163-166.9. The curbside requirements may be met either by the DRE itself or a procedure associated with the use of the DRE.

3. Questions/Answers

Question	Question
Answer	Answer
Number	
Question 1	Is the bond amount of \$7.5 million the combined bond value of all awarded vendor (s); each vendor bond being proportionate to the purchase order contract value for the counties for whom they have contracted?
Answer 1	No. Each vendor is required to post a bond or letter of credit in the amount of \$7.5 million.
Question 2	Shouldn't the NASED on Page 8 be National Association of State Election Directors?
Answer 2	Yes. This has been corrected with addendum #1 to this RFP.
Question 3	Why have the specifications been written to exclude totally, several companies that have systems already being used in the state?
Answer 3	The specifications are not written to exclude any company from participating. Specifications are written to provide voting systems that meet State and Federal requirements.
Question 4	Why do the specifications blatantly favor the DRE from Diebold and Sequoia and the Op scan for ES&S?
Answer 4	Same as answer number 3.
Question 5	The RFP #002724 requires that only bids with a certification number will be accepted. The PhoneElect system is the only patented telephone based system available today. It is currently undergoing certification by Ciber, Inc. of Huntsville, Alabama. Because of the nature of this technology, not all of the qualifications for certification have been decided so we are still going through the certification process. Certification cannot take place until the requirements have been determined. Will a bid as an alternative technology be accepted from PhonElect if the certification is not complete?
Answer 5	The State will accept alternate bids; however, all voting systems must be certified in accordance and pursuant with all specifications contained in the RFP and addenda thereto.
Question 6	Will North Carolina certify the system for use in North Carolina without a federal certification?
Answer 6	No
Question 7	Is the RFP available in MS Word?
Answer 7	No
Question 8	Page 35. item b) mentions a Cost Response Form. Is it the same as the Cost Proposal Tables on Pages 30 & 31
Answer 8	Yes
Question 9	Page 31, Cost Proposal Table Part 2. There is no line item nor table for the cost of ballot preparation. Does the State of North Carolina not have any considerations for the on going cost of ballot printing for at least the duration of the contract?

Answer 9	This RFP is for voting systems only.
Question 10	Should not the cost of ballot production be included in the Total Cost of Ownership?
Answer 10	No. This RFP is for voting systems only.
Question 11	Page 14, Requirement #3, Independently Tested and Verified. Will ITS consider vendors that have completed the ITA process or are in the process of ITA testing but have not received their final report (or NASED number) which in some cases takes 4-6 weeks.
Answer 11	See changes to bid provided in this addendum.
Question 12	Will a strong, proven defense in depth be acceptable for conformation to Requirement #19, System Security Requirements, or will each sub-item within Requirement #19 be seen as a separate requirement that each needs a response?
Answer 12	Vendors must respond to each sub-item as a separate requirement that needs a response.
Question 13	At the end of Section V of the RFP, it states in Bold letters, "The State intends to award a contract to multiple vendors, however, only one vendor per manufacturer will be allowed". Could the State please clarify this statement?
Answer 13	It is the intent of the State to award multiple vendors contracts; however, an award for identical manufacturer's equipment will not be made to multiple vendors.
Question 14	If a County uses an electronic pollbook that replaces their ballot distribution method of a voter activated system, would that qualify as the means to do voter ballot distribution and would it be considered a voter activated system?
Answer 14	An electronic poll book used to program or activate a device used to initiate a voting system has no effect on this requirement.
Question 15	When a voter is in line, is it acceptable for a county to use the electronic poll book in place of the ballot distribution method of a voter activated system? Does that qualify as the means to accomplish voter ballot distribution and be considered a voter activated system?
Answer 15	See Addendum # 2
Question 16	The RFP is unclear in Section IV and VI as to the length of time that the Performance Bond shall be in effect.
Answer 16	Addendum #1 clarifies this by making the term of the performance bond to be the length of the contract.
Question 17	50 percent of the equipment must be delivered within 30 days. Typically our delivery time and I think most vendors is like 90 days. I mean is this something special for North Carolina?
Answer 17	The RFP delivery requirements as set forth in the RFP are structured to comply with State and Federal mandates and provide enough time for each county to select a certified vendor, apply for HAVA funding, take delivery of equipment, and receive training in preparation for the May 2006 primary election.
Question 18	And Requirement 13, page 18, not allowing poll workers to activate a direct record system, why is that in there, may I ask, any particular reason? We've done about ten test

	elections in North Carolina where the poll workers have activated for the voters and never have had complaints. In fact, our potential customers like that particular feature of the system.
Answer 18	See Addendum #2
Question 19	The RFP (and North Carolina law) require "all software that is relevant to functionality, setup, configuration and operation of the voting system" to be placed in escrow in source and object code format. In the Diebold Election System, Inc. ("DESI") voting system, the operating system, various software drivers for ancillary components such as displays and card readers and other computer programs are the property of third parties and not available to vendors. Nonetheless, failure to supply the software for those components is a felony and the SBE may impose a penalty of \$100,000 for a failure to comply. How should a vendor address software for ancillary components developed by third parties?
Answer 19	Vendors must agree to place in escrow in source and object code format, all available "software that is relevant to functionality, setup, configuration and operation of the voting system" and indicate in the RFP response all that is not available and why it is not available.
Question 20	Similarly, North Carolina law requires that the vendor list all programmers involved in the development of the broad category of software described in question 1. As stated above, the vendors do not have access to all of this information for third party code, yet the failure to supply the same opens the vendor(s) to felony charges and significant penalties. How should a vendor address the identification of programmers of software for ancillary voting system components developed by third parties?
Answer 20	Vendors must list all programmers involved in the development of the broad category of software and provide full and detailed information on all software to which they do not have access and why it is not available.
Question 21	Also, for example, if it is determined a list of programmers is incomplete, can the State Board of Elections impose a separate penalty for every programmer not listed?
Answer 21	In addition to any other applicable penalties, violations of this section are subject to a civil penalty to be assessed by the State Board of Elections in its discretion in an amount of up to one hundred thousand dollars (\$100,000) per violation. (see NCGS Section 163-165.9A(b))
Question 22	Does the Board of Elections believe the certificate of the CEO must be absolute, or can it be based on a standard of "to the best of the information, knowledge and belief" of the CEO?
Answer 22	The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material placed in escrow is the same being supplied to the State for distribution to the counties.
Question 23	Further to question 22, how is the vendor expected to certify the "sameness" of the software or system being used by a county when the vendor does not have care, custody and control of the system?
Answer 23	RFP Requirement #9 Voting System Certification section 7) requires the vendor to supply the State Board of Elections any certified upgraded firmware/software for distribution to the counties that purchased systems that are designed to utilize such

	upgraded firmware/software. The State Board of Elections shall manage the distribution and installation of all upgrades.
Question 24	What is the legal requirement for the length of time after the sale of a system that the vendor must comply with the various duties under state law and the RFP?
Answer 24	Unless otherwise stated, the length of time after the sale of a system that the vendor must comply with the various duties under state law and the RFP are as long as the vendor's voting system is installed in a county in North Carolina.
Question 25	What is the standard for imposition of penalties? Will the state employ a "reasonableness" approach, or will any violation, however slight or inadvertent, automatically trigger the imposition of a penalty?
Answer 25	The State Board of Elections has the jurisdiction and power to determine, calculate and assess the amount of a penalty due under the provisions of G.S. 163-278.34(e).
Question 26	What is the liability of the vendor, both under the RFP and under state law, for the failure of the equipment to perform when the owner of the equipment fails to adequately maintain the equipment or fails to purchase maintenance or extended warranty contracts?
Answer 26	Civil liability of a vendor is governed by North Carolina law in addition to duties and liabilities imposed by the RFP. The action or inaction of a third party may or may not be relevant to liability under the RFP or general civil law.
Question 27	Will regulations be promulgated that include "safe harbors" so vendors can have some further clarification about their duties and responsibilities under the RFP and the law?
Answer 27	G.S. 163.165.7 (e) provides that the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting Systems. These rules, when adopted, will provide clarification about the duties and responsibilities of the vendors under the RFP and the law.
Question 28	Does a failure to respond to this RFP adversely affect the ability to sell to counties or others in the future; i.e. is the certification of a vendor's products in the State affected because it does not bid this opportunity?
Answer 28	Yes.
Question 29	Is it appropriate to conduct any "test" elections in the State at this time? Also if "yes" will that count towards satisfying the mandatory testing requirement in the new? Voting Equipment" law recently enacted?
Answer 29	Currently certified voting equipment may be used in upcoming municipal elections. The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county.
Question 30	Please confirm if the vendor is responsible for including in their bid any third party hardware needed to run election management software, or if this cost is the responsibility of the county.
Answer 30	Vendors must include any third party hardware required to run election management software in the Tabulation Hardware Unit Cost section of Cost Proposal Table (Part 2).

Question 31	The RFP states under Section IV, #3b that the proposal content should include "Detailed description of the vendor's firm" which must include items i-vi. Should this information be placed in "Response to Business Specifications" as laid out in Section IV, #7? If not, where should the requested description be placed?
Answer 31	The section referred to should be Section VII, #3b and the response to items i-vi should be placed in Section VII, #7, g) Response to Business Specifications.
Question 32	What information would the State like provided in response to Business Specifications?
Answer 32	The vendors should at a minimum respond to Business Specifications with details of :
	i) Full name, Federal Tax identification number, address, and telephone number of the organization;
	ii) Date established;
	iii) Background of firm;
	iv) Ownership (public company, partnership, subsidiary, etc.);
	v) If incorporated, state of incorporation must be included.
	vi) Number of full-time employees on January 1st for the last three years or for the duration vendor's firm has been in business, whichever is less.

4. Check ONE of the following options:
Bid has <u>not</u> been mailed. <u>Any changes</u> resulting from this addendum are included in our bid
Bid has already been mailed. <u>No changes</u> resulted from this addendum.
Bid has already been mailed. Changes resulting from this addendum are as follows:
Execute Addendum:
Bidder:
Authorized Signature:
Name and Title (Typed):
Date: